

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 810 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JAYESH ALIAS BAKO VINODBHAI CHOUDHRI

Versus

COMMISSIONER OF POLICE FOR THE CITY OF SURAT

Appearance:

1. Special Civil Application No. 810 of 2002
MR ANIL S DAVE for Petitioner No. 1
MS BANNA S DUTTA for Petitioner No. 1
- MR D.P. JOSHI, AGP for Respondent State
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of
an order 27.9. 2001 passed by the Commissioner of

Police, Surat City, in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a dangerous person. The detaining authority has considered two registered offences against the detenu relating to theft cases. The detaining authority has also considered statements of two anonymous witnesses recorded on 10th August, 2001 and verified on 25.9.2001 and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public order.

3. Learned Advocate for the petitioner Ms. Banna Datta restricted her arguments to the fact that there is nothing to indicate that there was disturbance to public order when the registered offences were committed. So far as statements are concerned, she submitted that there is no material to indicate that the power was properly exercised by the detaining authority under Section 9(2) of the PASA Act after undertaking due enquiry and verification regarding genuineness of the fear expressed by the witnesses and the need for use of power under Section 9(2) of the PASA Act, in comparison to the right of the detenu envisaged under Art. 22 of the Constitution of India. She has placed reliance on the decision of this Court in Bai Amina Vs. State of Gujarat, reported in 22 GLR 1186 and subsequent judgements wherein the said decision has been followed.

4. Learned Assistant Government Pleader Mr. D.P. Joshi has opposed to this petition.

5. Having regard to the rival side contentions raised before this Court, there is no dispute about the fact that the two offences registered against detenu relate to theft cases individual in nature. There is no material to indicate when the incident occurred or there was any disturbance to public order.

5.1 So far as statements are concerned, they have been verified by the detaining authority on 25.9.2001. There is nothing to indicate that the detaining authority examined the allegations made by the anonymous witnesses while considering social background of the detenu and the witnesses' antecedents and other relevant aspects to ensure that the fear expressed by the witnesses is genuine and not imaginery or by way of a camouflage used to cover up his own activities. The use of power under

Section 9(2) of the PASA Act therefore cannot be considered as based on cogent material. This would infringe the right of the detenu of making an effective representation and vitiate the detention. The petition therefore deserves to be allowed.

6. The petition is therefore, allowed. Order of detention dated 27.9.2001 passed by the Commissioner of Police, Surat City against the detenu is quashed and set aside. Detenu Jayesh alias Bako Vinodbhai Choudhri be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave, J.)

*/Mohandas